

PROCEDURES TO BE FOLLOWED ON
MOTIONS FOR SUMMARY JUDGMENT
FILED IN THE WESTERN DISTRICT OF WISCONSIN

Please read the following directions carefully -- doing so will save your time and the court's.

REMEMBER:

1. All facts necessary to sustain a party's position on a motion for summary judgment must be explicitly proposed as findings of fact. This includes facts establishing jurisdiction. (Think of your proposed findings of fact as telling a story to someone who knows nothing of the controversy.)

2. The court will not search the record for factual evidence. In other words, there may be evidence in the record that supports a party's position on summary judgment, but if that evidence is not articulated in a proposed finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.

3. A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute.

4. When you finish your brief, check it over with a fine tooth comb to be sure you haven't relied upon or assumed any facts that you have not included in your proposed findings of fact.

5. Proposed findings of fact need not be repeated in the accompanying brief. Factual assertions contained in a brief, even if supported with citation to the record, will not be considered by the court.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PROCEDURE TO BE FOLLOWED ON MOTIONS FOR SUMMARY JUDGMENT

I. MOTIONS FOR SUMMARY JUDGMENT

- A. Contents: A motion for summary judgment made pursuant to Rule 56 of the Federal Rules of Civil Procedure shall be served and filed and shall contain the following information:
1. A motion, together with such materials permitted by Rule 56(e) as the movant may elect to serve and file; and
 2. A statement of proposed findings of fact or a stipulation of fact between or among the parties to the action, or a combination of both; and
 3. A statement of conclusions of law; and
 4. A supporting brief.
- B. Proposed findings of fact and proposed conclusions of law may be submitted as a single document to the court. However, the motion and the accompanying brief shall be submitted as separate documents, and shall not include the proposed findings of fact or conclusions of law.
- C. Rules Regarding Proposed Findings of Fact:
1. The court will not consider any factual propositions contained in a brief that are not the subject of a proposed finding of fact.
 2. Factual propositions shall be set forth in numbered paragraphs, and to the extent practicable, each paragraph shall state only one factual proposition.
 3. The statement of proposed findings of fact shall include ALL factual propositions the movant considers necessary for judgment in the movant's favor. For example, the proposed findings shall include factual statements relating to jurisdiction, the identity of the parties, the dispute, and the context of the dispute. The movant should keep in mind who has the burden of proof with respect to each claim or defense when determining the proposed facts necessary to sustain the motion.
 4. The proposed findings shall include only those assertions of material fact about which the movant believes there is no genuine issue.

- D. The court will not consider any factual propositions contained in the proposed findings of fact not supported properly and sufficiently by admissible evidence.
1. The court will not search the record for factual matter that might support granting the motion.
 2. At the close of each numbered paragraph, the movant must cite to references in the record supporting the fact proposed in the paragraph.
- E. Only depositions, answers to interrogatories, admissions on file, including admissions made in an answer or other pleading, and affidavits may be cited in support of proposed facts.
1. Cites to references in the record shall include:
 - a. Depositions: the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony; or
 - b. Answers to Interrogatories: number of the interrogatory and the party to whom it was directed; or
 - c. Admissions made pursuant to Fed. R. Civ. P. 36: the number of the requested admission and the identity of the party to whom it was directed; or
 - d. Other Admissions: the form such admission takes, and the number of the page and paragraph of the document in which that admission is made. Admissions made solely for the purpose of the motion for summary judgment should be so designated; or
 - e. Affidavits: the page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made on personal knowledge, setting forth such facts as would be admissible in evidence, and showing affirmatively that the affiant is competent to testify to the matters stated therein.)
- F. Proposed conclusions of law shall be set forth in numbered paragraphs, shall accurately characterize the state of the law on the issue in question, and shall be supported with proper legal citation.

When a motion and supporting brief have been served and filed in compliance with the above, the court will issue a schedule for the procedures described below.

II. RESPONSES TO MOTIONS FOR SUMMARY JUDGMENT

- A. On or before the date specified in the schedule issued by the court, a party who elects to oppose the motion for summary judgment shall serve and file the following:
1. A response to the movant's proposed findings of fact; and
 2. A response to the movant's conclusions of law; and
 3. A brief in opposition to the motion for summary judgment; and
 4. Any materials permitted by Rule 56(e) that the party chooses to serve and file in opposition to said motion.
- B. A response to proposed findings of fact and a response to proposed conclusions of law may be submitted as a single document to the court. However, the accompanying brief in opposition shall be submitted as a separate document.
- C. Rules Regarding the Response to Proposed Findings of Fact:
1. Unless the nonmovant properly places a factual proposition of the movant into dispute, the court will conclude that there is no genuine issue as to the finding of fact initially proposed by the movant.
 2. The court will not consider any factual propositions contained in a brief that are not the subject of a finding of fact proposed in response to movant's proposed findings of fact.
 3. The court will not consider any factual propositions contained in the response to proposed findings of fact not supported properly and sufficiently by admissible evidence.
 - a. The court will not search the record for factual matters that might support denial of the motion.
 - b. The response shall answer each numbered paragraph of the movant's proposed findings, and shall state clearly whether there is a genuine issue as to the whole or a part of the factual proposition. If the nonmovant believes there is a genuine issue only as to part of the factual proposition, the response shall identify precisely that part of the numbered paragraph with which the nonmovant takes issue.
 - c. Any response arguing the existence of a genuine issue of fact shall cite only to deposition transcripts, answers to interrogatories, admissions on file, including admissions made in an answer or other pleadings, and affidavits complying with Rule 56(e).
 - d. The citations to the record in the nonmovant's response to proposed findings of fact shall be made with the specificity required of the movant.

4. If properly disputing the movant's proposed findings of fact alone does not adequately support the nonmovant's position or adequately addresses the undisputed facts necessary to the movant's position, the nonmovant may present its own proposed findings of fact (or a stipulation of fact between or among all of the parties to the action), and such proposed findings shall be made with the specificity required of the movant.

D. Responses to proposed conclusions of law shall be set forth in numbered paragraphs and shall be submitted in the following format:

1. The nonmovant shall respond to each numbered legal conclusion of the movant, and shall state clearly whether the conclusion is agreed to or disputed in whole or in part; if the dispute is partial, the response shall state precisely which portion of the proposed conclusion is disputed.
2. If a nonmovant believes that the motion for summary judgment must fail because of conclusions of law not stated by movant, that party may state such other conclusions of law.
3. The nonmovant's response and any proposed conclusions of law of the nonmovant shall accurately characterize governing law and shall be supported with proper legal citation.

III. REPLIES

A. On or before the date specified in the schedule issued by the court, the movant may serve and file any or all of the following items:

1. Numbered factual statements in rebuttal to factual statements made in response to movant's proposed findings of fact or to dispute new facts proposed by the nonmovant, together with appropriate citations to the record; and
2. A statement in rebuttal to the response to proposed conclusions of law; and
3. A rebuttal brief; and
4. A statement in rebuttal to the response or responses with respect to the form of judgment; and
5. Such materials permitted by Rule 56(e) which movant may elect to serve and file in rebuttal.

B. The court will conclude that there is no genuine issue as to any finding of fact initially proposed in a response, unless the movant's rebuttal properly puts the factual proposition into dispute.